



U.S. Department  
of Transportation

Research and  
Special Programs  
Administration

400 Seventh Street, S.W.  
Washington, D.C. 20590

APR 8 1999

Mr. John Krueger  
Manager, Waste Management  
BWX Technologies, Inc.  
1 Mound Road  
Miamisburg, Ohio 45343

Ref. No. 99-0068

Dear Mr. Krueger:

This responds to your letter of March 10, 1999, concerning requirements for shipping cylinders containing nonflammable compressed gases under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether you may ship charged cylinders that are beyond their retest dates.

You state that at a Department of Energy site you discovered nine cylinders containing krypton, helium, and neon. The cylinders were marked ICC 4BA 240, DOT 4BW 240, or ICC 3A 2015. Pressures in the cylinders range from 9 to 205 psig. The retest dates on all the cylinders have expired. You ask if the cylinders with the ICC marking may be shipped under the HMR, and if all of the cylinders may be shipped even though their retest dates have passed.

Division 2.2 materials (nonflammable, nonpoisonous compressed gases) are defined in § 173.115(b) of the HMR. For purposes of the HMR, a Division 2.2 material is one that: (1) exerts in its packaging an absolute pressure of 280 kPa (40.6 psia) or greater at 20°C (68°F); and (2) does not meet the definition for Division 2.1 (flammable gas) or 2.3 (gas poisonous by inhalation) material. A nonflammable, nonpoisonous compressed gas that does not exert an absolute pressure of at least 280 kPa in its packaging is not a Division 2.2 material and is not subject to the requirements of the HMR.

Section 173.23 of the HMR permits use of a packaging with a specification marking prefix of "ICC" instead of "DOT" if the packaging otherwise conforms to applicable specification requirements. In addition, as you note in your letter, § 173.34(b) permits use of a cylinder that was in domestic use previous to the date on which the specific cylinder



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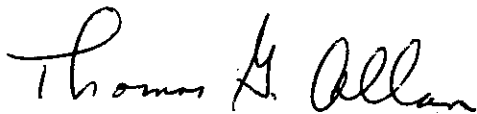
173.34

specification was adopted in the HMR provided the cylinder complies with the requirements applicable to the gas with which it is charged. Provided these conditions are met, a cylinder with a specification marking prefix of "ICC" may be used to ship Division 2.2 materials under the HMR.

Sections 173.34(e) and 173.301(c) of the HMR state that a cylinder past its test date may not be charged or filled with a hazardous material and transportation in commerce unless that cylinder has been inspected and retested. A DOT specification cylinder containing a hazardous material need not be emptied to meet a testing schedule. The charged cylinder may remain in service, and it may be transported in commerce in compliance with the HMR. However, after the cylinder has been emptied, it may not be charged and refilled and offered for transportation until it has been properly inspected and retested in accordance with § 173.34(e).

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Thomas G. Allan".

Thomas G. Allan  
Senior Transportation Regulations Specialist  
Office of Hazardous Materials Standards

**BW Technologies, Inc.**

Babcock &amp; Wilcox, a McDermott company

**Babcock & Wilcox of Ohio, Inc.**

WM-014/99

March 10, 1999

1 Mound Road  
P.O. Box 3030  
Miamisburg, Ohio 45343-3030  
(937) 865-4020

Mr. Ed Mazullo  
Office of Hazardous Material Standards  
Department of Transportation  
Washington, D.C.

SUBJECT: DOT Rules Interpretation

Dear Mr. Mazzullo:

During cleanup operations at Mound Facility, a Department of Energy site in Miamisburg, Ohio operated under contract by Babcock & Wilcox of Ohio, several legacy gas cylinders were discovered. These cylinders ( 9 total ) were marked ICC 4BA 240, DOT 4BW 240 or ICC 3A 2015. The test date on all cylinders has expired. The cylinders contain nonflammable compressed gases ( krypton, neon, and helium ) with pressures ranging from 9 to 205 psig. The cylinders have not been recharged since having been received. Another Department of Energy site has expressed an interest in receiving these gases and we would like to ship them if they meet 49 CFR requirements.

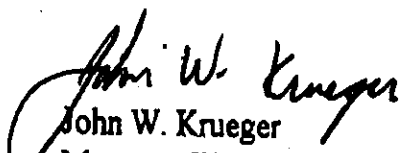
Two questions come to mind in regards to the shipment of these cylinders:

1. Do the cylinders with the ICC marking as opposed to DOT meet the requirements of 49CFR 173.34 (b) Grandfather clause. "A cylinder in domestic use previous to the date upon which the specification therefor was first made effective in these regulations may be used if the cylinder has been properly tested and otherwise complies with the requirements applicable for the gas with which it is charged."?
2. Can these cylinders be shipped without retesting since they have not been refilled based upon 49CFR 173.301 (c) Retest of container. "A container for which prescribed periodic retest has become due must not be charged and shipped until such retest has been properly made."?

Please respond with your interpretation of the Department of Transportation requirements as pertains to the above mentioned shipment of compressed gas cylinders.

If you need additional information, please call Jerry Crawford at (937) 865-3172.

Sincerely,

  
John W. Krueger  
Manager, Waste Management

cc: Robert Rothman, DOE/MEMP  
John F. Ross, WM  
Jerry Crawford

Gorsky  
§ 173.34  
99-0068